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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
SPERONE WESTWATER INC. and	:	Index No. 08 CV 03263 (RJH)
SPERONE WESTWATER GALLERY, LLC,	:	(THK)
	:	
Plaintiffs	:	
	:	
- against -	:	<b>DECLARATION OF GARY D.</b>
	:	<b>SESSER IN FURTHER</b>
	:	<b>SUPPORT OF MOTION TO</b>
ARCHIVIO ALIGHIERO BOETTI, AGATA	:	<b><u>DISMISS THE COMPLAINT</u></b>
BOETTI, MATTEO BOETTI and	:	
ANNEMARIE SAUZEAU,	:	
	:	
Defendants.	:	
	:	
-----X		

Gary D. Sesser hereby declares, under penalty of perjury, that the following is true and correct:

1. I am a member of the law firm of Carter Ledyard & Milburn LLP, located at 2 Wall Street, New York, New York 10005, attorneys for the Archivio Alighiero Boetti (the "Archivio"), Agata Boetti ("Agata"), Matteo Boetti ("Matteo") and Annemarie Sauzeau (collectively, "Defendants") in the above-captioned action. I submit this declaration in support of Defendants' Reply Memorandum of Law in support of the Motion to Dismiss the Complaint.

2. Defendants' reply is filed pursuant to an Order signed by this Court on June 13, 2008, in which Defendants were permitted to file its reply papers for its motion to dismiss the

complaint on or before September 4, 2008, and an Order signed by this Court on June 30, 2008 extending the page limit for Defendants' reply memorandum to 20 pages.

3. I submit this declaration to provide the Court with true and accurate copies of portions of the web site of the Archivio Alighiero Boetti that are referenced in Plaintiffs' opposition memorandum of law at p. 28 and in Defendants' reply memorandum.

4. A true and correct copy of the Archivio web page that Plaintiffs cite as an alleged solicitation to do business in New York is annexed as exhibit Annexed as **Exhibit A**. That page lists "certification fees" ranging from 150 to 600 Euros and specifies that artwork to be reviewed must be shipped to the Archivio in Rome. This page was accessed on August 25, 2008 at <http://www.archivioalighieroboetti.it/modulistica/CERTIFICATION%20FEES.pdf>.

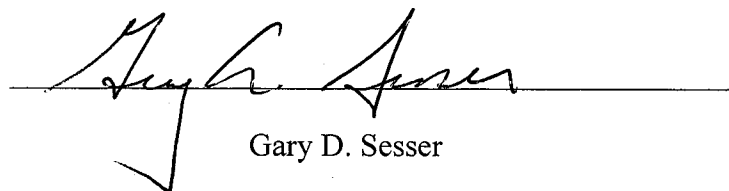
5. A true and correct copy of the Archivio's standard review agreement, which notes that the Archivio "normally needs to directly examine the work itself" and specifies jurisdiction in Rome for any disputes is annexed as **Exhibit B**. This page was accessed on August 25, 2008 at <http://www.archivioalighieroboetti.it/modulistica/CONSIGNMENT%20FILE.pdf>.

6. A true and correct copy of the "About Us" web page from the Archivio's web site is annexed as **Exhibit C**. This page was accessed on August 25, 2008 at [http://www.archivioalighieroboetti.it/about\\_us.asp](http://www.archivioalighieroboetti.it/about_us.asp).

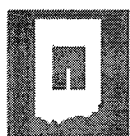
Declaration pursuant to 28 U.S.C. §1746.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2008.

  
Gary D. Sesser

# **EXHIBIT A**



ARCHIVIO  
ALIGHIERO BOETTI

#### CERTIFICATION FEES

Rates vary according to the different typologies of the works:

- Editions and books: € 150,000 + V.A.T. (20%).
- Embroideries and works on paper, not exceeding cm 40 x 40: € 200,00+ V.A.T. (20%).
- Embroideries and works on paper, not exceeding cm 100 x 70: € 400,00 + V.A.T. (20%).
- All works featuring bigger dimensions: € 600,00+ V.A.T. (20%).

The payment must be effectuated at the same moment in which the material is shipped for examination at:

Archivio Alighiero Boetti  
C/C 615202696656  
Banca Intesa, Agency 12, Piazza Sonnino 17, 00153 Rome  
ABI: 03069, CAB: 05066, CIN: I;  
IBAN: IT21 1030 6905 0666 1520 2696 656;  
BIC: BCITITMM712.

**We would be grateful if you could fax to the Archive a copy of the transfer and all the information for the invoice.**

**Archivio Alighiero Boetti**  
vicolo della Penitenza,17 - 00165 Rome  
Telefax: +39 06 68 71 596  
VAT number: 05914901003 - Fiscal Code: 96293010581  
web: [www.archivioalighieroboetti.it](http://www.archivioalighieroboetti.it)  
e-mail: [info@archivioalighieroboetti.it](mailto:info@archivioalighieroboetti.it)

# **EXHIBIT B**

Archivio Alighiero Boetti  
Vicolo della Penitenza 17  
00165 Roma

I, the undersigned

Residing in

At n. /in Via

kindly request the following works to be registered at the Archivio Alighiero Boetti:

Title:

Year (specify if on the front or at the back of the work):

Technique:

Dimensions in cm. (height to come first):

Name, address, telephone or fax numbers of the applicant:

Name, address, telephone and fax numbers of the owner, if different from the applicant:

I, the undersigned, state hereby to be acquainted with the following conditions and to accept them in full:

1. The applicant is aware that, in order to carry out a scientific examination, to an eventual registration at the archive of Alighiero Boetti's works and to issue the certification of the work, the Archivio normally needs to directly examine the work itself, which has to be forwarded within 1:00 pm of the examining day and withdrawn within 24/48 hours from the moment of delivery.
2. In case the Archivio needs a longer period of time in order to complete the above mentioned operations, it could keep the work, remaining valid all the general conditions which regulate this agreement. In the latter case, however, the applicant may request, at anytime, the return of the work, renouncing though any claim or action against the Archivio for an eventual delay in certification of authenticity and/or registration at the Archive.
3. The applicant states to have provided for an appropriate insurance cover which guarantees the work against all the risks of theft, loss, damage and/or its destruction as well as guaranteeing Archivio Alighiero Boetti against eventual claims of the third assignees of the work subject to registration, with regard to the objections on the attribution.
4. The applicant states to relieve the Archivio of any responsibility for theft, loss, damage, destruction or any other damaging fact to the work, deriving from a light negligence of the Archivio and the people who operate within it.
5. The applicant binds himself/herself to withdraw the work within the expiring 48 hours indicated in the clauses 1 & 2 (above).

6. The work will be registered at the Archivio and the relevant certification of authenticity will be issued only in case its undoubted authenticity is verified. In any case, the Archivio reserves the power to back out of the present agreement. The applicant waives irrevocably any claim and/or action against the Archivio with regard to the denial of the work's registration at the Archivio Alighiero Boetti and/or its certification of authenticity i.e. the denial to express opinion, whatever it may be.
7. The undersigned applicant states to accept an eventual response with regard to the non-acceptance to register the work. The response will be communicated by the Archivio in writing. The undersigned, guarantees the Archivio, also on behalf of the parties entitled and/or assignees of non-registered work, against claims of the third parties, who the undersigned binds himself/herself to inform about an eventual non-registration.
8. For the issuance of the work's certification of authenticity, the undersigned binds himself/herself to pay the Archivio a normally requested fee for this kind of service. Such payment has to be paid prior to the Experts Committee Meeting and consequently, the Archivio will issue the certification of authenticity or the certification of non-authenticity. In the event, as provided by the clause 6, if the Archive does not express opinion on the work's authenticity, the fee paid will be returned to the applicant. As regards the fee to be paid, the applicant states to be aware of the relevant amount while signing the present document.

Should any dispute arise with regard to the interpretation and/or the completion of the present agreement, it will exclusively fall within the jurisdiction of the Courts of Rome.

Rome,.....

The Applicant

.....

As per articles 1341 & 1342 of the C.C., the applicant states to know and to accept specifically the clauses 1, 3, 5, 7 (response acceptance, guarantees) of the above agreement.

The Applicant

.....

The Archivio returns a copy of the present contract duly signed by a person who represents it in order to confirm the reception of the above mentioned work and photographic material described above.


Rome,.....

Archivio Alighiero Boetti

.....

# **EXHIBIT C**





# ARCHIVIO ALIGHIERO BOETTI

[HOME PAGE](#) | [SITE MAP](#) | [LANGUAGE](#)

[Home Page](#)
[Archive](#)
[Alighiero Boetti](#)
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About Us

Staff

Registration

Copyrights

Forms

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☒ keywords
 ☐ advanced search

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The Archivio Alighiero Boetti (the Alighiero Boetti Archive) is a Cultural Association started in 1995 upon the initiative of the Artist's family. The Archive Association does not comprehend a collection of artworks. It is rather a research site aimed at retrieving, collecting and cataloguing the documentation inherent to the artist's works and life.

Our research ultimately heads at publishing the Alighiero Boetti Catalogue Raisonné (2007), conceived as a complete and reliable documentary, philological and historical reference frame.

[Procedure](#)

In connection with the constant updating of its database, the Archive also provides **expertise reports** on Alighiero Boetti's works ([see Registration](#)). The expertise takes place solely upon request of the collectionists. While increasing its database, the archive stands guarantor for the safeguard of the Artist's work. Such function may occasionally implies the report or the denouncing of illicit facts connected to a particular piece (for example if the work is presented for a repeated number of instances while formerly declared not attributable as an original work by Boetti).

In the eventuality of a sale, the Archive will be pleased to supply an accurate account concerning any work that has been formally authenticated. While the sale has yet been concluded we would be grateful to the new owner to contact us in order, first to be informed on which formula the collector prefers for the description of the work in the Catalogue, and second but as important, for us to keep trailing each work.

Currently, the **staff** is composed of an Executive Committee (Chair: Agata Boetti; Director: Annemarie Sauzeau; Responsible for expertise meetings: Matteo Boetti) and Registrar staff (Simona Cresci, Iaria Giaccone, Dominique Lora). Furthermore the Archive regularly recurs to external collaborators such as technical experts, graphologists, art historians and legal consultants.



► Other activities

The Archivio Alighiero Boetti participates in the organisation of exhibitions, catalogues and other cultural activities, with the purpose of promoting the artist's work. Our collaborations include both public institutions and private galleries such as:

Barbara Gladstone Gallery, New York; Castello di Rivoli-Museo d'Arte Contemporanea, Rivoli; Contemporary Arts Museum, Houston; Esso Gallery, New York; Gagosian Gallery, New York; Galleria Nazionale d'Arte Moderna, Roma; MART- Museo d'Arte Moderna e Contemporanea di Trento e Rovereto; MMK-Museum für Moderne Kunst, Frankfurt am Main; M.O.M.A.-The Museum of Modern Art, New York; PS1 Contemporary Art Center, Long Island City, New York; Sperone Westwater Gallery, New York; Studio Giangaleazzo Visconti, Milano; Whitechapel Gallery, London.

► Services

To have access to our premises and consult the thematic library, the photographic material and the bibliographical documentation an appointment has to be scheduled in advance.

 [print page](#) -  [send page](#)

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